GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Public Services – Commercial Tax Department – General Administration (Vigilance & Enforcement) Department - Certain irregularities noticed in issuing irregular refunds granted in the case of M/s Gayathri Projected Ltd – Preliminary enquiry conducted – Certain irregularities noticed – Recommended for initiation of departmental action against Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada - Article of charges- Issued.

REVENUE(VIGILANCE.II) DEPARTMENT

G.O.Rt.No.1074 Dated:02-11-2016.

Read the following:-

1. From Director General(Vig&Enf) & E.O. Prl.Secy to Govt., General Administration (V&E) Dept, Report No.99 (C.No.198/V&E/R1/2014, dt:26.5.2014).
2. From CCT's, AP, Hyderabad, Ref.No.V1/170/2014, dt:23.07.2016.
3. G.O.Ms.No.466, Rev(Vig-II) Dept, dt:02-11-2016.

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ORDER:

It is proposed to hold an Inquiry against Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada in accordance with the procedure laid down in Rule-20 of the APCS (Classification, Control & Appeal) Rules, 1991.

2) The substance of the imputations of misconduct/misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed as (Annexure-I).A statement of imputations of misbehavior in support of the article is also enclosed as (Annexure-II). A list of documents by which the articles of charges are proposed to be sustained is also enclosed in Annexure-III.

3) Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada is directed to submit his explanation within fifteen(15) days from the date of receipt of this order i.e., written statement of his defense and to state whether he desires to be heard in person.

4) Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada is informed that an inquiry will be held only in respect of those articles of charges which are not admitted, he should therefore specifically admit or deny each article of charge.

(P.T.O)

5) Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada is further informed that if he does not submit his written statement of defense on or before the time specified in para-3 above, further action will be initiated based on the material available.

6) Attention of Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada is invited to Rule-24 of APCS (Conduct) Rules, 1964 under which no Government Servant shall bring or attempt, to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings it will be presumed that Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule-24 of the APCS(Conduct) Rules, 1964.

7) The receipt of the Charge Memo, may be acknowledged.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

AJEYA KALAM
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To
Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada. (Through Commissioner of Commercial Taxes,AP,Vijayawada)

Copy to:
The Commissioner of Commercial Taxes, Andhra Pradesh, Vijayawada.
SC/SF

//FORWARDED BY ORDER//

SECTION OFFICER

ANNEXURE-I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SRI K.V. JAGADESHWAR RAO, THE THEN COMMERCIAL TAX OFFICER ,ABIDS AND PRESENTLY WORKING AS ASSISTANT COMMISSIONER (CT), VIJAYAWADA -II DIVISION.

ARTICLE OF CHARGE:

That the said Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer, Abids and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada committed grave irregularities in granting the refund of taxes of Rs.11,22,64,773/-, in respect of M/s Gayathri Project (P) Limited, Hyderabad for the period from 2007-08 and 2008-09 without giving due regards to the provisions under section 22(-A), Sec.57 and other relevant provisions of the APVAT 2005, G.O.Ms.No.94, Irrigation and CAD(PW-COD) Department, dt:01.07.2003 and failed to exercise due diligence in granting the said, causing loss to the public exchequer and correspondingly allowing unlawful pecuniary gain to an extend of Rs. 7,29,90,908/- to the dealer. Thus it is a clear case of dereliction of duty, willful negligence and criminal misconduct on the part of the said officer.

Thus, Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer, Abids and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada, by his above mentioned acts, exhibited lack of integrity, devotion to duty, conduct unbecoming of a Government Servant in violation to the provisions under rule 3(1) and (2) of APCS (conduct) Rules, 1964.

AJEYA KALAM
SPECIAL CHIEF SECRETARY TO GOVERNMENT

//FORWARDED BY ORDER//

SECTION OFFICER

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT AND MISBEHAVIOUR IN SUPPORT OF ARTICLES OF CHARGE FRAMED AGAINST SRI K.V. JAGADESHWAR RAO, THE THEN COMMERCIAL TAX OFFICER ,ABIDS AND PRESENTLY WORKING AS ASSISTANT COMMISSIONER (CT), VIJAYAWADA -II DIVISION.

It has been brought to the notice of the undersigned by the Director general & E.O, Principal Secretary to Government, General Administration (Vigilance & Enforcement) Department that an enquiry was conducted based on the allegations relating to illegal refund of taxes by Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer, Abids and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada to the work contractors i.e., M/s Gayathri Project Limited, Hyderabad. The enquiry report furnished by the Director General & E.O, Principal Secretary to Government, General Administration (Vigilance & Enforcement) Department reveals that the amount of tax collected at source (TCS), which was added separately over and above the consideration for the execution of work, payable by the contractee was unlawfully refunded. In the instant case, the contractee is a Government contractor i.e., M/s Gayathri Project Limited, Hyderabad and the estimates procured from the Irrigation Department clearly shows that the amount of tax was separately added to the consideration for execution of works for the same tax when found to be in excess of the tax liability of the dealer ought to have been fortified as per the AP VAT Rules, but was refunded without going into the full facts of the case.

It is clear case of dereliction of duty, willful act of negligence and criminal misconduct on the part of the said officer, and the details of the case are as under:

The inclusion case of tax component in the estimates as per the G.O.Ms.No.94, Irrigation and CAD(PW-COD) Department , dt:01.07.2003 the following provisions is permitted to be added in the estimate.

1) Tax at the rate of 2% for items relating to canal digging, lining, repairing road works etc., where the earth work excavation and embankment is involved and for works other than the above, tax at 4% shall be added in the data.

As per the G.O.Ms.No.94, addition of tax in the estimates of various Engineering Departments is permitted.

As per the EPC guidelines, the estimates prepared by the contractor shall be deemed to be inclusive of taxes and duties on all the materials that the contractor has to purchase for performance of the

contract . Accordingly the Input Tax paid by the contractor on his inputs is also being provide by the Contractee i.e., Government of Andhra Pradesh, so the contractor is not entitled to claim Input Tax Credit also.

As per the Sales Tax Act provisions, the contractor has to pay tax when the work is executed and transferred to the contractee for payment. This burden is also borne by the contractee i.e., Government of A.P. Up on finalization of estimates, the contractee (Govt.) making provision for work contract tax i.e., either 4% or 2.8% based on the nature of contract over the Estimated contract value (EC), regardless whether the goods involved in works are taxable or not.

The Contractee i.e., Government of A.P. being a tax levying and collecting authority, made that tax provision (TCS) in the Government works to comply is own statute (AP VACT ACT - 2005) and collecting it back in the form of book adjustment when payments are made to the contractors.

Further, having thought that there were possibilities for unjust enrichment to the contractors, the Government carefully inserted exclusive provisions in the APVAT Act 2005 to safeguard its money and issued necessary GOs and Memos and to comply the said GOs and Memo instructions of Government , the commissioner of Commercial Taxes, issued several clarifications.

On perusal of the refund file of M/s Gayathri Project Limited, Hyderabad it is found that the dealer has executed Civil works in I &CAD and other Government organizations during the said period. The estimates prepared by the contractee Departments are found to be inclusive of taxes which are separately earmarked in the estimates.

The details of the refunds by the Commercial Tax Department officials are as under:

Sl. No	Year	Amount of refund	Name & Designation of Officer	Irregularities observed
1.	2005-06	Rs.2,00,33,819/-	Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada.	Determined and forwarded irregular refund proposal to the Deputy Commissioner for onward submission to the higher officers.

			Sri M. Ram Babu, the then Deputy Commissioner (Commercial Tax), Abids division, Hyderabad and presently working as Deputy Commissioner (Commercial Tax), Guntur	Forwarded irregular refund proposal to the Joint Commissioner (Commercial Tax)
			Sri G. Venkateswarulu, the then Joint Commissioner (Commercial Tax) and presently working as Addl. Commissioner of Commercial Tax, Hyderabad.	Approved irregular refunds.
2	2006-07	Rs.2,34,66,720/-	Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada.	Determined and forwarded irregular refund proposal to the Deputy Commissioner for onward submission to the higher officers.
			Sri M. Ram Babu, the then Deputy Commissioner (Commercial Taxes), Abids division, Hyderabad and presently working as Deputy Commissioner (Commercial Tax), Guntur	Forwarded irregular refund proposal to the Joint Commissioner (Commercial Tax)
			Sri G. Venkateswarulu, the then Joint Commissioner (Commercial Tax)and presently working as Addl. Commissioner of Commercial Taxes, Hyderabad.	Approved irregular refunds.
3	2007-08	Rs,2,21,01,185/-	Sri K.V. Ramanaiah, the	Determined excess but not forfeited.

			then Assistant Commissioner (Commercial Tax) abids division, Hyderabad and presently retired.	
			Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada.	Forwarded irregular refund proposal to the Deputy Commissioner for onward submission to the higher officers.
			Sri M. Ram Babu, the then Deputy Commissioner (Commercial Tax), Abids division, Hyderabad and presently working as Deputy Commissioner (Commercial Tax), Guntur	Forwarded irregular refund proposal to the Joint Commissioner (Commercial Tax)
			Sri G. Venkateswarulu, the then Joint Commissioner (Commercial Tax) and presently working as Addl. Commissioner of Commercial Taxes, Hyderabad.	Approved irregular refunds.
4	2008-09	Rs.1,71,72,680/-	Sri K.V. Ramanaiah, the then Assistant Commissioner (Commercial Tax) abids division, Hyderabad and presently retired.	Determined excess but not forfeited.
			Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax)	Forwarded irregular refund proposal to the Deputy Commissioner for onward submission to the higher officers.

			LTU, NO.II Division, Vijayawada.	
			Sri M. Ram Babu, the then Deputy Commissioner (Commercial Tax), Abids division, Hyderabad and presently working as Deputy Commissioner (Commercial Tax), Guntur	Forwarded irregular refund proposal to the Joint Commissioner (Commercial Tax)
			Sri G. Venkateswarulu, the then Joint Commissioner(Commercial Tax) and presently working as Addl. Commissioner of Commercial Taxes, Hyderabad.	Approved irregular refunds.
5.	2009-10	Rs.2,94,90,369/-	Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada.	Forwarded irregular refund proposal to the Deputy Commissioner for onward submission to the higher officers.
			Sri M. Ram Babu, the then Deputy Commissioner (Commercial Tax), Abids division, Hyderabad and presently working as Deputy Commissioner (Commercial Tax), Guntur	Forwarded irregular refund proposal to the Joint Commssioner (Commercial Tax)
			Sri G. Venkateswarulu, the then Joint Commissioner (Commercial Tax) and presently working as Addl. Commissioner of Commercial Taxes, Hyderabad.	Approved irregular refunds.

Thus, by the above mentioned Acts, by the Sri K.V. Jagadeshwar Rao, the then Commercial Tax Officer and presently working as Assistant Commissioner (Commercial Tax) LTU, NO.II Division, Vijayawada. while functioning as Commercial Tax Officer, Abids, has showed gross negligence while doing their official duty causing loss of revenue to the State exchequer, and in not obeying the Government orders and as well as instructions of the higher authorities and contravened Rule 3 of the of APCS (conduct) Rules, 1964.

AJEYA KALAM
SPECIAL CHIEF SECRETARY TO GOVERNMENT

//FORWARDED BY ORDER//

SECTION OFFICER

ANNEXURE-III

LIST OF RECORDS IN SUPPORT OF ARTICLES OF CHARGE FRAMED AGAINST SRI K.V. JAGADESHWAR RAO, THE THEN COMMERCIAL TAX OFFICER ,ABIDS AND PRESENTLY WORKING AS ASSISTANT COMMISSIONER (CT), VIJAYAWADA -II DIVISION.

General Administration (V&E) Department Vigilance Report No.99 (C.No.198/V&E/R1/2014, dt:26.5.2014.

AJEYA KALAM
SPECIAL CHIEF SECRETARY TO GOVERNMENT

//FORWARDED BY ORDER//

SECTION OFFICER